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Remarks:

Amendments to the claims:

Claims 32-48 are pending in this application. By this Amendment, claims 18-31 are canceled, and new claims 32-48 are added.

No new matter is added to the application by this Amendment. New independent claims 32 and 46 find support in canceled claims 1 and 8, as originally filed, in canceled claims 18 and 23 and within the specification, as originally filed, at, for example, page 14, lines 1-5. New dependent claims 33-45, 47 and 48 find support in canceled claims 2-4, 7-11, 13, 14, 16 and 17, as originally filed, and canceled claims 18, 19, 21, 22, 24-30.

Applicants appreciate the courtesies shown to Applicants' representative by Examiner Yoo in the March 5, 2009 telephonic interview. Applicants' separate record of the substance of the interview is incorporated into the following remarks.

Reconsideration of the application is respectfully requested.

Regarding the rejection of claims 18, 21, 22 and 25-28 under 35 USC 102(b) as allegedly being anticipated by JP 2001-087370 to Horikiri (hereinafter "JP 370"):

The Applicants respectfully traverse the rejection of the foregoing claims in view of JP 370.

Prior to discussing the relative merits of the Patent Office's rejection, Applicants point out that unpatentability based on "anticipation" type rejection under 35 USC 102(b) requires that the invention is not in fact new. See *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302, 36 USPQ2d 1101, 1103 (Fed. Cir. 1995) ("lack of novelty (often called 'anticipation') requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee"). Anticipation requires that a *single reference* [emphasis added] describe the claimed invention with sufficient precision and detail to establish that the subject

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matter existed in the prior art. See, *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990).

In view of the cancelation of claims 18-31, this rejection is moot.

However, new independent claims 32 and 46 incorporate the features of canceled claim 23, which was not rejected under 35 U.S.C. §102(b) relying on JP 370.

As acknowledged by the Patent Office's failure to reject canceled claim 23 in view of JP 370, JP 370 fails to teach or suggest air treatment device comprising a person sensor, and an airborne agent detector comprising a means to expel a portion of air treatment agent, upon detection of the airborne agent by the airborne agent detector and upon detection of a person by the person sensor, wherein, in use, a processor unit allows airborne treatment agent to be expelled in response to a signal from one or more of the airborne agent sensors, only when the person detector gives a signal and for an interval thereafter as required by new independent claims 32 and 46.

The principle of "inherency," in the law of anticipation, requires that any information missing from the reference would nonetheless be known to be present in the subject matter of the reference, when viewed by persons experienced in the field of the invention. However, "anticipation by inherent disclosure is appropriate only when the reference discloses prior art that must necessarily include the unstated limitation, [or the reference] cannot inherently anticipate the claims." *Transclean Corp. v. Bridgewood Servs., Inc.*, 290 F.3d 1364, 1373 [62 USPQ2d 1865] (Fed. Cir. 2002); *Hitzeman v. Rutter*, 243 F.3d 1345, 1355 [58 USPQ2d 1161] (Fed. Cir. 2001) ("consistent with the law of anticipation, an inherent property must necessarily be present in the invention described by the count, and it must be so recognized by persons of ordinary skill in the art"); *In re Robertson*, 169 F.3d 743, 745 [49 USPQ2d 1949] (Fed. Cir. 1999) (that a feature in the prior art reference "could" operate as claimed does not establish inherency).

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Thus, when a claim limitation is not explicitly set forth in a reference, evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *Continental Can Co.*, 948 F.2d at 1268. It is not sufficient if a material element or limitation is "merely probably or possibly present" in the prior art. *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295 [63 USPQ2d 1597] (Fed. Cir. 2002). See also, *W.L. Gore v. Garlock, Inc.*, 721 F.2d at 1554 (Fed. Cir. 1983) (anticipation "cannot be predicated on mere conjecture respecting the characteristics of products that might result from the practice of processes disclosed in references"); *In re Oelrich*, 666 F.2d 578, 581 [212 USPQ 323] (CCPA 1982) (to anticipate, the asserted inherent function must be present in the prior art).

Accordingly, reconsideration of the propriety of this rejection and its withdrawal is solicited.

Regarding the rejection of claim 19 under 35 USC 103(a) as being unpatentable over JP 370 in view of US 4,084,732 to Dearling or US 5,364,027 to Kuhn:

Applicants respectfully traverse the rejection of the foregoing claims in view of JP 370 in view of Dearling or Kuhn.

In view of the cancelation of claim 19, this rejection is moot.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Regarding the rejection of claims 20 and 23 under 35 USC 103(a) as being unpatentable over JP 370 in view of US Publication 2004/0033171 to Kvietok et al. (hereinafter "Kvietok"):

Applicants respectfully traverse the rejection of the foregoing claims in view of JP 370 and Kvietok.

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In view of the cancelation of claims 20 and 23, this rejection is moot. However, as discussed above, new independent claims 32 and 46 include the features of canceled claim 23.

The Patent Office acknowledges that JP 370 fails to teach or suggest a person detector and a heater element that is actuated upon detection by a detector such as a person detector in order to increase the emanation of the air treatment agent and located proximate to a diffusion wake (see page 6 of the Office Action). The Patent Office introduces Kvietok as allegedly remedying the deficiencies of JP 370 by allegedly teaching a person detector (i.e., motion detector) and a processor unit which causes a portion of airborne treatment agent to be expelled after receiving signals from the detector in order to emanate the air treatment agent into the atmosphere. The Patent Office alleges that it would have been obvious to one of ordinary skill in the art to provide a heater element as the means for expelling an air treatment agent within a source of air treatment agent after receiving a signal from a detector in the device of JP 370 in order to provide a portion of air treatment agent to the atmosphere as desired by a user as shown by Kvietok.

JP 370 does not teach or suggest a person detector as acknowledged by the Patent Office. Kvietok does not remedy this deficiencies of JP 370 because Kvietok fails to teach or suggest a processor unit that expels airborne treatment agent in response to a signal from one or more of the airborne agent sensors and a signal by a person detector.

In contrast, Kvietok teaches that devices can be configured to turn on and off in response to some stimulus, such as by sensors that respond to light, noise and/or motion (see paragraph [0056] of Kvietok). Kvietok also teaches that (a) a microprocessor can be used with motion sensors to turn on the device (for example, a heater and/or a fan in the device), (b) a device can be off all the time until a person moves in the vicinity of the motion sensor, and (c) a device can then turn on when a person walks in the vicinity of the motion sensor (see paragraph [0056] of Kvietok). However, Kvietok fails to teach or

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suggest a microprocessor that activates the device in response to signals from one or more airborne agent sensors and a person detector.

Thus, neither JP 370 nor Kvietok, taken singly or in combination, teaches or suggests an air treatment device having a person sensor, and an airborne agent detector comprising a plurality of airborne agent sensors, wherein, in use, a processor unit allows airborne treatment agent to be expelled in response to a signal from one or more of the airborne agent sensors, only when the person detector gives a signal and for an interval thereafter as required by new independent claims 32 and 46.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Regarding the rejections of claim 23 under 35 USC 103(a) as being unpatentable over JP 370 in view of US 5,735,918 to Barradas:

Applicants respectfully traverse the rejection of the foregoing claims in view of JP 370 and Barradas.

In view of the cancellation of claim 23, this rejection is moot. However, as discussed above, new independent claims 32 and 46 include the features of canceled claim 23.

The Patent Office acknowledges that JP 370 fails to teach or suggest a person detector where the processor unit allows airborne treatment agent to be expelled in response to a signal from one or more of the sensors, only when the person detector gives a signal and for an interval thereafter (see page 8 of the Office Action). The Patent Office introduces Barradas as allegedly remedying the deficiencies of JP 370 by allegedly teaching a person detector which gives a signal and for an interval thereafter to cause airborne treatment agent to be expelled in response to such signal in order to automatically operate the device so that the scent is released from the device into the room only when a person enters/is present in the room or in the vicinity of the device. The Patent Office alleges

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that it would have been obvious to provide a person detector in the device of JP 370 in order to provide the air treatment agent only when a person is present in the vicinity of the device as exemplified by Barradas. Applicants respectfully disagree with these allegations by the Patent Office.

JP 370 does not teach or suggest a person detector as acknowledged by the Patent Office. Barradas does not remedy the deficiencies of JP 370 because Barradas fails to teach or suggest a processor unit that expels airborne treatment agent in response to a signal from one or more of the airborne agent sensors and a signal by a person detector.

In contrast, Barradas teaches a sensor for the portable air treatment device which becomes activated upon movement of an individual in the vicinity of the device (see col. 1, lines 52-59 of Barradas). Barradas also teaches a scent container having a row of apertures or holes for passively permitting scent from a scent/aroma generating material to rise there-through and into the room (see col. 3, lines 26-29 of Barradas). Moreover, Barradas teaches that the device is automatically operated by means of a motion sensor; however, if one desires to operate the device manually, the device is provided with a manual switch button (see col. 3, lines 31-34 of Barradas). However, Barradas fails to teach or suggest a microprocessor that activates the device in response to signals from one or more airborne agent sensors and a person detector.

Thus, neither JP 370 nor Barradas, taken singly or in combination, teaches or suggests an air treatment device having a person sensor, and an airborne agent detector comprising a plurality of airborne agent sensors, wherein, in use, a processor unit allows airborne treatment agent to be expelled in response to a signal from one or more of the airborne agent sensors, only when the person detector gives a signal and for an interval thereafter as required by new claims 32 and 46.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

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In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Regarding the rejections of claim 24 under 35 USC 103(a) as being unpatentable over JP 370 in view of US 6,418,783 to Sunshine et al. (hereinafter "Sunshine"):

Applicants respectfully traverse the rejection of the foregoing claim in view of JP 370 and Sunshine.

In view of the cancelation of claim 24, this rejection is moot.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience.

The early issuance of a *Notice of Allowability* is solicited.

PETITION FOR A TWO-MONTH EXTENSION OF TIME

Applicants respectfully petition for a two-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

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CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully Submitted;



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24 April 2009

Date:

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CERTIFICATE OF TELEFAX TRANSMISSION UNDER 37 CFR 1.8

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Allyson Ross

24 April 2009

Date

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